

APPROVED: 11/15/10

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
OCTOBER 18, 2010**

A regular meeting of the Zoning Board of Appeals was held in the Court Room, Town Hall, Highland Falls, New York, on Monday, October 18, 2010, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

David Weyant, Chairman
Jack Jannarone, Deputy Chairman
Tim Donnery
Tim Doherty
Tony Galu
Ralph Montellese

Absent

Ray Devereaux

Tobias Lake, Attorney, (Jacobowitz & Gubits, LLP)

ALSO PRESENT:

John Hager, Building Inspector, Al Sapienza and Jim Titolo.

The meeting was called to order by the Chairman, at 7:00 P. M., with the Pledge to the Flag. It was noted that a quorum was present.

MR. WEYANT: I am going to open the Consolidated Zoning Board of Appeals meeting for the Town of Highlands for October 18, 2010. I note for all present and the Board that Supervisor Magryta and I have agreed that we will go to 8:00 P. M., tonight. At that point in time, the Town Board needs to use the room for their budget session which is televised back to the residents of the Town. Depending on where we are with the hearing, if the hearing is over fine and well. If it is not over, we will recess and continue next month. I did make a promise that we would be done at 8:00 P. M.

All members are present with the exception of Mr. Devereaux, who is away.

We need to approve the minutes of our meeting of September 20, 2010, which were sent to you prior to tonight. Do I hear any changes to those minutes?

A motion was made to approve the September 20, 2010 Minutes.

Motion: Mr. Donnery Seconded: Mr. Doherty Approved

Al Sapienza, 66 Ondaora Parkway, Highland Falls, NY, use variance and area variances for an apartment above existing garage.

MR. WEYANT: Before the Public Hearing is opened I would like to review for the Board and for those here, giving the background about why we are doing what we are doing. The subject property at 66 Ondaora Parkway is a multiple dwelling which is prohibited within the R-3 Zoning District. The property's use does pre-date the adoption of Village Codes. In the Building Department's file is a letter dated August 15, 1974 indicating that the property was established with nine (9) dwelling units. In September 2003, a building permit was authorized for repair and alteration of the existing detached accessory garage which has existing use and occupancy listed as a storage workbench area and a desk area. The permit was applied for and issued to replace the roof and make dormers higher on both sides to increase storage capacity, head room and put in bigger windows. No Certificate of Compliance was ever issued in this permit although it is considered open and unresolved.

The Building Department became aware that the space was currently unlawfully occupied as a dwelling unit rather than the accessory storage area and office area. The owner was advised in July 2009 that it was unlawfully occupied and it was necessary for a certificate of occupancy to be issued in order for that space to be used as a dwelling unit. In November 2009, an application for a building permit to change the use of the space above the garage from storage to apartment was received. The request was denied because of Village Zoning Code which prohibits multiple dwellings within the R-3 Zoning District. A denial letter was issued to the applicant with notification that a zoning variance may be applied for. The Building Department received a copy of the owner's application to the Village Planning Board. Subsequently, the applicant appeared before the Village Planning Board in 2010 and the Planning Board took no action because of the fact that a zoning variance would need to be applied for.

As we all know, in June the variance was applied for and that was for an interpretation of the Zoning Code. In other words, does the Code allow the application to change the use of this area above the garage to a residential area without this Board's approval or not. This Board acted on that interpretation in August and felt that a use variance application would be required from the applicant in order to make that area above the garage into a dwelling unit. If, in fact, this Board does grant a use variance, then necessary area variance would be required because the area is too small to meet the current Code for a dwelling unit. This Board interpreted the Code that was the prior Public Hearing that we had.

We are back here tonight. The applicant has reapplied for a use variance in order to use the area above the garage as a residential area. That is why we are here tonight.

At 7:04 P. M., the Public Hearing was opened.

Mr. WEYANT: Mr. Sapienza and Mr. Titolo, please hold up your right hands. Do you solemnly swear that the information provided herein to be accurate and true to the best of your ability?

Mr. TITOLO: I do.

ZBA – 10-18-10 - Page 3 of Witt and Fran19
Mr. SAPIENZA: I do.

MR. WEYANT: Now, Jimmy I need your Affidavits of Posting and Mailing and so forth.

MR. TITOLO: Mr. Chairman, I ask two things one is that I came before the Town Board to try to get a stamp from June. She was in a discussion with the Supervisor. I came back twice.

MR. WEYANT: The stamp, you mean to be notarized?

MR. TITOLO: Yes, sir. Can I provide you with my identification?

MR. WEYANT: I know who you are. You are supposed to have that notarized. How do you feel about that Counsel? I know this to be Mr. Titolo as well as everybody on this Board.

MR. LAKE: This is the Affidavit of Posting?

MR. WEYANT: This is the Affidavit of Posting. I know this to be Mr. Titolo, as well as everybody on this Board.

MR. LAKE: I think in this case, it is probably something that we can have notarized after the fact.

MR. TITOLO: Thank you.

MR. DOHERTY: I can attest to the fact that it was posted. I have seen it.

MR. WEYANT: You have seen the posting?

MR. DOHERTY: Yes.

MR. WEYANT: We also have an Affidavit of Mailing which is signed and not notarized.

MR. TITOLO: I have copies of each one. This is what Mr. Hager gave me for the mailing.

MR. WEYANT: I would note for the record that I have an Affidavit of Publication that tonight's meeting was publicized and shown in the News of the Highlands ten (10) days prior to tonight. The formalities are in order. Please review for the Board what we discussed in the past and how you feel about this use variance. The Public Hearing is open.

MR. TITOLO: We have come in front of the Board on a number of occasions throughout this year. Initially, we were directed that it was possibly an area variance. Your Counsel did more research and determined that it was a use variance. Counsel defined four (4) objectives that I have to meet in order to have that use variance approved. I hope that we have done that with financial statements of which I am going to ask you to review. I have a cover letter that reviews and defines each

condition. We have only made two (2) copies of the financial documents, one for you, Mr. Chairman and one for the record that you can pass through. Mr. Sapienza is very concerned about having a number of these financial documents running around, but they are here for your review. We ask that you consider the approval of a use variance based on the current economic conditions. Mr. Sapienza and his family have found it extremely difficult to make ends meet over the last three years with the increase in taxes, with the loss of revenue based on increased vacancies, and with the increase in the taxes.

MR. WEYANT: At the present time, are there vacancies in the apartments?

MR. SAPIENZA: We literally just filled it up. Just two weeks ago.

MR. WEYANT: So you do have nine units presently occupied.

MR. SAPIENZA: Ten.

MR. WEYANT: Ten counting the one that is being discussed.

MR. TITOLO: Mr. Chairman, Mr. Sapienza would like to read a couple things.

MR. SAPIENZA: First of all, I would like to say that I am sorry about this whole thing. I am sorry about it. If anything was done improperly anytime I take full responsibly. It stops here. If anything was not done correctly, I know I did not do it correctly right in the beginning. I lived in LA from 1984 until the year 2000. I don't own this house – my mother owns the house. I don't make one penny off this house my hand to God on my mother's life. I don't make a penny. I came back – I don't know if anybody lives in Ondaora Parkway – my father was real sick – I don't know if you know my dad - my dad was real sick. The place was an eyesore. If you remember, the front was a gravel driveway – it was painted three colors – there were broken windows – the cops were there all the time. If you know the Highland Falls Police, they will tell you. It was an eyesore. My father was going broke and was really, really sick.

I am the youngest of five children so I don't have an ulterior motive that when my mom dies - and I hope she never does – I get the money because I have four brothers and sisters – they don't do anything. I support my mother. I came back and the house was a wreck. It was either dump it or fix it, fix it up. So, I talked my dad into taking a mortgage. We renovated the whole thing. We changed the whole character of the house. I built that \$10,000 parking lot. I built the front lawn.

MR. WEYANT: Can you tell me what year we are talking about?

MR. SAPIENZA: I will tell you the exact year. I started renovating this is 2000. The main house first.

MR. WEYANT: Let's back up just a little. We know that either the house went up or something happened in 1974.

MR. SAPIENZA: In 1972 my father bought it, I believe. It was either 1972 or 1974. I don't know but it was the early 70's.

MR. WEYANT: The point we were making with my initial statement was that it did pre-date Code. So whatever was done was done. We did not have a Code to worry about at that point in time. You renovated. When did the fire occur?

MR. SAPIENZA: I finished in December of 2003. I went back to LA to live my life. I did not miss auditions. I would fly back but I worked for free for a year. I flew back. In February, construction guys put heat tape around a pipe in Apartment One and it caught on fire and it burned down the place.

MR. WEYANT: At that point in time, the area above the garage that we are concerned about, how was it being used at that point in time?

MR. SAPIENZA: It was an apartment. But before 2000, it was a disgusting apartment. It had one window in the front. It had a little bathroom with an aluminum shower and a kitchen area with a hotplate. My father's first partner, Luis Crua, lived there for like 14 years as a groundskeeper. It was a disgusting little unit.

MR. WEYANT: So it was being lived in at that point in time before the fire, and it was being rented.

MR. SAPIENZA: It was being rented.

MR. WEYANT: Now I am confused.

MR. JANNARONE: He was living in it or it was being rented? Which was it?

MR. SAPIENZA: Luis Crua was in the 70's and 80's. Then it was being rented. My father's first partner lived there for a long, long time. Then strangers lived in.

MR. WEYANT: Above the garage?

MR. SAPIENZA: Above the garage. The stairs were there, the door was there, everything was there. When we did this whole first renovation, we expanded it, put it up. I did not – I am guilty - I did not know about any of this stuff. I did not know I had to go through this whole process, so we made it bigger. Everything was fine. Then the Building Inspector, Seth, came after it was up.

MR. WEYANT: This was after the fire?

MR. SAPIENZA: No this was way before the fire. So Seth came and he said, "what is this?" I happen to have been there that day. So we went through the house. He said, "you have to get a permit for this." So I said I am sorry, please tell me what to do and I will pay for whatever it is, I apologize. I filled out the papers. Then the fire came. When the fire came, I happened to be in New York that weekend and I was up here. That was the only thing that did not burn.

MR. WEYANT: The apartment?

MR. SAPIENZA: The apartment was the only thing that did not burn - the garage and the apartment over the garage. Everything else burned. We did not have

enough insurance money. We had to get another mortgage. We did the house – Jim did the whole house. All I want to say is this as a neighbor. You guys have to do what you have to do. I am asking for a personal favor. I believe that what I did was good for the greater good. It was good for everyone. It was good for the neighborhood. I keep that house. I have a guy there right now every single day, six days a week, and I pay him every day. His name is George Once. It is in perfect condition. It is meticulous. It loses money every year and I have to give my mother money to support her. Only that house and social security is what my mother lives on. It loses money every single year. Officers live there for the most part from West Point. It is the nicest place within 20 miles of West Point for them to live. We have captains and majors, and I keep it like a five star hotel. I think what I did – I made a mistake in the beginning – I did not know – I am an actor. I came here honestly to take care of my parents. My father died in 2005. I made that house beautiful. I made the neighborhood better and I made the values better. I hope that is true and that you guys will take that into consideration. I am asking for help that's all.

MR. TITOLO: He is very passionate about this house. I think you know that. He spent a lot of his own money to renovate this house and keep it within the character.

MR. SAPIENZA: We have owned it since 1972. Believe me if you saw it, it was a rat hole in 2000. It ruined the whole neighborhood. I kept the rooms the same, the moldings on the stairwells. I kept its character of the J. P. Morgan era. I was always good with my neighbors. I kept in communications with them. We are good landlords. I check on the place all the time. I keep a guy there every day. I don't mind taking care of my mother. That is not my profession. Again, I swear to God in front of all of you, I don't make one penny off that house. I am asking, please help me.

MR. TITOLO: I want to pass out the records and want you to have a summary sheet of everything that I am providing you. It addresses each one.

MR. WEYANT: The summary sheet summarizes so we don't have to worry about making copies.

MR. TITOLO: No, but Mr. Chairman, if you want to go back and look at each one of those, I flagged them for you.

MR. WEYANT: I understand your point that it should not be public knowledge. You will attest to the fact that what is in here is summarized on this sheet. Please continue.

MR. TITOLO: Yes, sir.

MR. SAPIENZA: If there are any questions. Again, I will keep that place meticulous. Please go look at it.

MR. TITOLO: I believe that you have already proven that.

MR. DONNERY: I just have one question. Did anyone live in this apartment between 1972 and 1976?

MR. TITOLO: The answer to that is “yes,” however, six months ago we tried to go in that direction and we were told that we needed a use variance. Mr. Donnery, I would appreciate and I understand what you are saying and I feel you are 100% right at this point. I think that we have identified the requirements for a use variance and that is where I would like to stay if that is possible.

MR. SAPIENZA: Can I answer that, also?

MR. TITOLO: No.

MR. DONNERY: Just for my own knowledge - so if it was before Code that someone lived in there.

MR. SAPIENZA: I will ask my mother. I will find out for you when Luis lived there. I think Luis did.

MR. WEYANT: I asked that question. I asked at the time, before Code, was that being used as a living unit. I believe you attested that it was.

MR. TITOLO: Yes.

MR. DONNERY: Okay. I don't recall going over that with Alyse.

MR. WEYANT: No, not with Alyse, just now. I asked the question because I wanted to get a timeline in my mind like you are trying to do. What was happening above the garage? I was under the impression that it was an office. Now I am being told it was not an office that it was lived in.

MR. JANNARONE: It was not a rental apartment. It was somebody who was there.

MR. WEYANT: It was a caretaker, perhaps?

MR. SAPIENZA: He was a half owner.

MR. TITOLO: Mr. Chairman, yes, someone lived there prior to zoning. At some point, someone had paid rent for that apartment. But, I respectfully request that this Board and you, Mr. Chairman, this has been 9 or 10 months, and I was directed to address it as a use variance, and I hope that is what I did. I would prefer to do that.

MR. WEYANT: I understand where you are coming from, but again you can't restrict this Board from asking questions which will help us understand the situation better.

MR. DONNERY: My question now would be to our Attorney for legal advice on that.

MR. LAKE: My understanding: I believe that this Board, correct me if I am wrong, on August 16, 2010, passed an interpretation that a use variance was required. At this point, to go back and to say that the building had been used as an apartment prior to the adoption of zoning and continually throughout that period. I think we are passed that point. There has already been an interpretation that a use variance is required.

MR. WEYANT: We are not contesting that at all. This Board has established that we do need a use variance.

MR. DONNERY: Fine.

MR. TITOLO: Please take a look at the tabs if you have any questions with the numbers.

MR. DONNERY: If we are going into former use, he just has to answer the four questions.

MR. WEYANT: Before we get to that point, I am looking to see if there is anyone else from the public that wishes to speak out here. Hearing none, I believe that I will move that the Public Hearing be closed.

MR. JANNARONE: Do they have anything more to say?

MR. WEYANT: They can still ask questions or make statements after the Public Hearing. I do not see anyone else from the Public here that wants to comment on this variance request.

MR. DONNERY: Before we close the Public Hearing, one other question for our Attorney.

MR. WEYANT: We have to do one thing first. Are you ready to close the Public Hearing?

MR. DONNERY: No. I believe this would go into the Public just in case. If you remember back when Gary Lent wanted to do an apartment above the garage in Fort Montgomery, this is the same scenario. It was a use variance. We turned him down. But under the understanding that can anyone else in Ondaora Park come up and say "I have a two car garage - I want to put an apartment over it" because we offered this gentleman a use variance?" That is my question.

MR. DOHERTY: Isn't every case handled independently?

MR. WEYANT: I believe it is.

MR. LAKE: It is all handled independently. If you are assuming that these are people in the same zoning district. If multi-family is not permitted in the zoning district, and someone wants to have a multi-family use in the district, then the answer is yes.

MR. GALU: The problem I have is you keep saying special use variance. We have already established that this was already an apartment. He should not be asking for a special use variance.

MR. DONNERY: Not special, just a use variance.

MR. WEYANT: It is a use variance. Don't put the word special in front of it. It is just a use variance to allow a dwelling unit.

MR. GALU: Okay, a use variance. But I am saying what Tim is saying, if someone else has a garage like it, and then they would want to put an apartment in. His is pre-existing.

MR. WEYANT: Yes, it is.

MR. DOHERTY: If you remember correctly, the Lent case was: It was a single family home. They wanted to put a second floor on that home. That is the difference between these two. This has been there all along. Lent wanted to actually redesign the entire structure.

MR. DONNERY: I was trying to get some advice legally.

MR. DOHERY: I agree.

MR. WEYANT: But, Tim, each case comes before us on its own merits. It just does not mean that willy nilly anybody can do something above their garage now. They have to come here and they have to by our interpretation of the Code they have to apply for a use variance if it is not allowed in the zoning district they are in to do that.

MR. DONNERY: Right, I understand that. I know that with area variances and use variances there is a slight difference.

MR. WEYANT: Yes, there is.

MR. DONNERY: If I remember right, it has been a long time since I went to class on this, we cannot discriminate what use? If we grant him one, and his neighbor three blocks down wants one, we can't say no?

MR. LAKE: No, because each use variance has these four standards applied to it that all go to unnecessary hardship. Anytime anyone in a zoning district that is requesting a use that is not allowed in the district and is seeking a use variance, they have to go through these standards and it is on an individual basis. Each set of facts differ.

MR. GALU: This is pre-existing.

MR. JANNARONE: We are bringing up an issue I thought we just closed and said we were not going to consider.

MR. TITOLO: Mr. Chairman may I just read through this real quickly and address the four points.

MR. WEYANT: We are not at that point. I am going to still ask that the Public Hearing be closed. We can then get into what Jim wants to talk about because that is what this Board wants to talk about.

At 7:23 P. M. a motion was made to close the Public Hearing.

Motion: Mr. Doherty Seconded: Mr. Montellese Approved

MR. WEYANT: I am going to ask Counsel to review what is needed by this Board to make a use variance of the four areas. We can discuss it and talk about it and take input from the applicant.

MR. LAKE: No use variance shall be granted by the ZBA unless the applicant shows that the zoning regulations have caused unnecessary hardship. Unnecessary hardship is the overall standard that has to be shown. In order to prove unnecessary hardship there are four standards that have to be met. It is the applicant's obligation to meet those standards and to prove to the Board that those standards have been met.

The first is the applicant cannot realize a reasonable return on the property. The applicant has to show that he is unable to make a reasonable return on the property. There has to be substantial lack of return and they have to demonstrate this by competent financial evidence.

MR. WEYANT: Tobias, let's stop there. Do you want to comment on that?

MR. TITOLO: Yes, sir Mr. Chairman. We submitted as part of this package and the other package tax returns for 2007, 2008, and 2009 showing \$21,061 as a loss for 2007, \$27,837 as a loss for 2008, \$24,205 as a loss for 2009, respectively. These are Federal Tax Returns and the actual have been flagged and highlighted.

MR. JANNARONE: Question. Since depreciation goes into that, that is not the actual cash loss on this?

MR. TITOLO: This is a Federal Tax Return that shows Net Loss.

MR. JANNARONE: Yes, I know, I was listening. Depreciation is part of that Net Loss. He did not lose \$21,000 in cash in that year or the next year, or the next.

MR. SAPIENZA: He is probably right. You must be correct. I have laid out some \$90,000 that my Mom owes me, and I don't mind.

MR. TITOLO: Depreciation represents money that a client or a homeowner or a property owner can offset income. However, I think it is evident that whatever his depreciation is, this gentleman puts ten times that into the property. It is a loss. The Federal Government does not distinguish between including depreciation or not.

MR. JANNARONE: I know. The \$21,000 shown as a loss is not cash out of pocket loss. His actual cash out of pocket loss would be less than that.

MR. TITOLO: Mr. Jannarone, we were asked to show competent financial statements.

MR. JANNARONE: I know.

MR. TITOLO: What we did was bring financial statements that showed Net Losses on the property. We don't distinguish between income after depreciation or before depreciation.

MR. JANNARONE: I know, but what we are concerned with here is how much it is actually costing your client.

MR. TITOLO: He has a right and the ability to depreciate it. It is considered a loss.

MR. JANNARONE: I understand that. I am talking about cash not tax laws.

MR. TITOLO: The outline that Counsel told me was not something that represented the cash value on the property. It is competent financial statement.

MR. JANNARONE: I realize that he did not actually lose \$21,000 in 2007; he lost some number less than that because he has taken depreciation which he certainly should do.

MR. TITOLO: We respectfully disagree with you because whether he is depreciating this year or next year, he is still putting monies back into the property that he is losing.

MR. JANNARONE: You are missing my point. This number here is not what he actually lost. For tax purposes, yes, absolutely agree. However, that is not what he lost out of pocket because depreciation is a paper loss.

MR. TITOLO: If depreciation represents \$5,000 this year that he can offset income and Mr. Sapienza can show you \$5,000 of expenses that he paid this year to upkeep the house.

MR. WEYANT: That is something we can address.

MR. JANNARONE: That is included in here. He is saying that he was double counting something. If he is saying he is putting \$5,000 out that would be included in there, correct, Counsel?

MR. LAKE: That is an issue for the Board.

MR. SAPIENZA: I think what you are saying is correct, depreciation is in there. But when I tried to refinance this place three months ago, because I can't pay the \$14,000 in school taxes, and I will pay them as soon as I get another acting job. I am not going to not pay my bills. I could not pay the \$14,000 for September first I had to take it to January. I tried to refinance, that is the damn total that they took as my income. You are right, sir. I am going to swear that I lose money out of my pocket every year and I give it to my mom. I am choosing to do it. If somebody bought this house now and took the mortgage, they would never make money. They would have to wait 10 to 15 years until the rents went up.

MR. TITOLO: We were asked to bring competent financial statement.

MR. WEYANT: I understand that, we are not disputing what you brought. Before we go to number 2, is there any further discussion on the first point that our Counsel made?

MR. JANNARONE: Yes, the second paragraph in item number 1. It says, "If granted the addition would provide \$15,000 of rental income." Yet you said it is rented now. How could it provide \$15,000 more than it already is?

MR. TITOLO: I was told that this is a use variance for an apartment that is not acceptable, right? We are presenting you verification: (1) that there is a loss, and (2) that this apartment, if approved, would increase the value of the gross income. That is all we are doing,

MR. JANNARONE: How can you do that if it is already rented?

MR. TITOLO: If it is already rented, if it has been rented since 1972, then we should not even be here. Six months ago this decision should have come up. We were told to address this as a use variance. That is what we have done.

MR. JANNARONE: I am just reading what you have right here.

MR. DONNERY: That is what he is saying. This \$15,000 - it does not matter if he made it last year. That is what he is saying he is going to get for rent.

MR. JANNARONE: But they already said they have been renting it out. It is being rented right now. How can he get \$15,000 on top of the money he is already getting?

MR. DONNERY: No, it is not on top. That is what he will rent that apartment for.

MR. GALU: That is what it is for.

MR. TITOLO: If you allow us, we will continue to get the \$15,000.

MR. WEYANT: I guess what we are getting at is: Is the \$15,000 included in the tax returns now? If it is, and if it is income coming in from this 10th unit, then it would be reflected on your tax return. Jack's point is you can't make another \$15,000 if it is already included in there.

MR. JANNARONE: That is all I am saying.

MR. WEYANT: Can we go to number 2.

MR. LAKE: The second thing that the applicant must demonstrate to the ZBA is that the hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood.

MR. TITOLO: It is the position of Mr. Sapienza and his family that the hardship is unique based on the fact that it is the only unit multi-family dwelling in the neighborhood and predates any zoning regulations and restrictions.

MR. WEYANT: It is the only multi-family in all of Ondaora Park?

MR. JANNARONE: Yes, as far as I know, unless somebody is doing it illegally.

MR. WEYANT: Number 3 Counselor.

MR. LAKE: Is there no other discussion?

MR. WEYANT: No.

MR. LAKE: Number 3, the applicant must demonstrate that the use variance, if granted, will not alter the essential character of the neighborhood.

MR. TITOLO: It is the position of the applicant that the essential character of the neighborhood would not be altered in any way based on the fact that the multi-family use of the property has been the same for more than 50 years and the property supports the additional parking required as demonstrated in the survey provided to this Board on March 2010.

MR. DONNERY: You can't change it any because it has been that way.

MR. JANNARONE: However, at the Public Hearing in July 2010, the one neighbor who commented on it vehemently opposes saying it did change the character of the neighborhood for her, namely, Mrs. Ignacio, in the backyard. She said that having the apartment there, people were looking right over the fence into her swimming pool area where she had her young grandchildren and that she objected to that. It does change the character of the neighborhood to her.

MR. TITOLO: Why we are here, Mr. Chairman, is because Mr. Sapienza wanted to pull a permit to put a screened in staircase. John, you can attest to this. Based on the fact that he did not have the CO for the 10th unit, we could not get that permit. In the event that we are granted this use variance, Mr. Sapienza will build a screened wall to insure that Mr. Ignacio will not have any change. I just want to reiterate the fact that in no way is the building changing, no footprint, no framing, nothing is going to change on that building. The only issue that Mrs. Ignacio had is that she thought the building was going to come all the way back to the wall.

MR. DONNERY: That is the way that I took it. She thought you were going to change the building or move the building.

MR. JANNARONE: She did say though that the people on the stairs were looking into her backyard and that is why you are attempting to address it by screening.

MR. GALU: What difference does that make? It is neither here nor there.

MR. TITOLO: Mr. Chairman, in the event that we are granted this use permit, we will apply for a permit to close in the staircase and satisfy Mrs. Ignacio's requirement.

MR. WEYANT: You've made that point. Number 4.

MR. LAKE: The fourth element to show unnecessary hardship is that the applicant must demonstrate that the alleged hardship has not been self-created.

MR. TITOLO: It is the position of the applicant that a hardship was not self created and is a direct result of the recent economic conditions, higher vacancy rates, and higher property and school taxes in the Village of Highland Falls. It should also be noted over the past three years, none of the Maple House residents had school aged children that attended any of the schools in the Town of Highlands District. Mr. Sapienza's school taxes have increased over 30% in the last three years. In addition, it should also be noted that Mr. Sapienza and his family continue to maintain the highest level of property maintenance possible despite the substantial reduction in gross rental income due to the economic conditions and increased vacancy rates at the Maple House.

MR. WEYANT: These are the four criteria that this Board has to deal with in order to approve a use variance, correct Counselor?

MR. LAKE: Yes.

MR. WEYANT: John, any comments, anything you would like to add at this point.

MR. HAGER: I really don't have anything to add. They speak about changing the screening on the back porch for the stairway. I would remind them that whatever gets changed and actually whatever does exist needs to be brought up to whatever the building code is. We don't know exactly what they will have to do back there just to meet the minimum code. They may choose to do more than that.

MR. DOHERTY: Again, we are not addressing that at this time.

MR. WEYANT: No we are not. Gentlemen, my feeling is with the new information provided tonight by the applicants, the full disclosure of finances plus the summary, I would like to review them before I make any decision. I don't know how the rest of you feel. I don't think I am ready tonight to act on this request.

MR. GALU: He provided everything.

MR. WEYANT: I want to review it, Tony, I don't think it is fair to ask me right now to go through this and make a decision from it. I would think all of you would want to do the same.

MR. JANNARONE: Also, going back to item number 1, reasonable rate of return - you have given us 2007, 2008 and 2009 when the economy is in a downturn. How did it do when the economy was good?

MR. TITOLO: Mr. Jannarone, one second, there was a fire that basically destroyed the building from 2004, 2005, and 2006.

MR. WEYANT: Give me a timeline again. When was the fire?

MR. SAPIENZA: February of 2004. It was empty for 9 months. It never made a lot of money since I did that first renovation.

MR. WEYANT: It was empty as of 2004.

MR. JANNARONE: But again, these numbers reflect a time when everybody is hurting.

MR. TITOLO: Mr. Chairman, we were told not to bring in 10 years of financials. We were told to bring in recent financials.

MR. WEYANT: By whom?

MR. TITOLO: By Counsel, here. The only way we can identify that is through financial statements.

MR. WEYANT: By Alyse Terhune, Counsel? I don't recall that.

MR. TITOLO: It was discussed that the only way we could identify the fact that it is a hardship is through formal financial statements.

MR. WEYANT: Yes.

MR. TITOLO: No one said we have to bring in 10 years of financial statements. We have three years of financial statements.

MR. JANNARONE: And my point is that those three years are at the absolute worst time to be looking at anybody's finances because the economy sucks.

MR. DONNERY: He is telling you that the place burned down for two years. That would make his finances even worse. You don't want to look at 2004, 2005 and 2006 because they are catastrophic.

MR. WEYANT: How do the rest of you feel about this? I don't feel I can vote on this tonight.

MR. DOHERTY: I have no problem.

MR. MONTELLESE: I am ready, also.

MR. WEYANT: Really, you don't want to go through these numbers?

MR. DOHERTY: I see his cover letter, these are Federal tax returns. I doubt very much that these gentlemen have falsified these tax returns under oath. I am going to take it as a cover letter. Quite honestly, I am not an accountant this would make my head explode if I read this. I am telling you right now, I am going to take this for face value that this is true.

MR. WEYANT: Do you want to time to read this over?

MR. DOHERTY: It is two pages I have read it two times already.

MR. WEYANT: The Chairman hasn't.

MR. TITOLO: The reason why I identified each one of those pages is that they could be quickly reviewed. We testified under oath that all this information is correct. Mr. Sapienza is doing a project in Toronto. He has been up there for the last three months. He is actually flying back there tomorrow morning.

MR. SAPIENZA: I apologize that I was not here the last time. I could not be here, I was filming. I would have been here, this is very important to me.

MR. DONNERY: Once again, a question for Counsel. When we grant the use variance, don't we go one, two, three, four, and have a question and answer for each one, if I remember right?

MR. LAKE: That is a good way to do it. It is good to have as much discussion about each element as possible.

MR. DONNERY: I thought you had to put that into the determination.

MR. LAKE: If we did a written determination, we would.

MR. DONNERY: We would say that we accept it and all approve for each one.

MR. LAKE: Not for each one, no. It would just be a vote at the end. A written determination would lay out the reasoning for each element.

MR. DONNERY: We only did this once it has been a long time.

MR. WEYANT: It has been a while. What does the majority of this Board like to do now? Do you feel that you have enough substantial information to go ahead and make a motion at this point?

MR. DOHERTY: I feel that way.

MR. GALU: I do.

MR. MONTELLESE: I do, too.

MR. DONNERY: In my mind, if I remember how we did it. Last time we had Counsel read it. It was Terry Holt when we passed one of these. Number one, we went down and accepted the tax returns. Number two the hardship.

MR. GALU: We just went over all that.

MR. DONNERY: No, it has to be put in legal terms that we vote on. You just can't say that it is okay. It has to be put in legal terms that we accepted it.

MR. LAKE: If you voted to approve the use variance, we would. After that, we would draft a written declaration.

MR. WEYANT: A written determination would take all four of these and describe what was presented.

MR. DONNERY: So that goes after we vote. I thought that was part of the vote.

MR. JANNARONE: The fact that we discussed all those things is important. They will clean up the language.

MR. WEYANT: The determination letter that I will get and eventually they would get will have to address all four of these points with what was presented tonight.

MR. DONNERY: Like I said, it was quite some time ago. Looking at this, I don't see a reason why we should not grant this use variance in my mind. This is acceptable the way I look at it.

A motion was made to grant a Use Variance for Mr. Sapienza.

Motion: Mr. Donnery Seconded: Mr. Doherty Approved
With a Roll Call Vote:

Mr. Doherty	-	Aye
Mr. Montellese	-	Aye
Mr. Galu	-	Aye
Mr. Donnery	-	Aye
Mr. Jannarone	-	Nay
Mr. Weyant	-	Nay
Mr. Devereaux	-	Absent

MR. WEYANT: The motion to approve the use variance is approved with one member absent. Counsel will advise Alyse Terhune. We are on a time situation here. We have two area variances to work on in order to finish this because the dwelling does not meet Code for the total square footage.

MR. DOHERTY: That is a rear yard side, I believe.

MR. TITOLO: Side yard.

MR. WEYANT: What is your pleasure, to you want to hold that part of this until next month, or do you want to do it now. Do you feel you have enough information to act on the two area variances needed?

MR. DONNERY: I don't think we have the proper amount of time to discuss it, if we have to clear the building in 13 minutes.

MR. WEYANT: We want to be out of this room, as I said. I promised the Supervisor.

MR. DONNERY: Would it be hurting you by pushing this off to next month?

MR. TITOLO: There is no problem with me coming in here. I would just think that Mr. Sapienza has been through this for the last 12 months. We know what the area variance is. I would like to have a closing statement. We had a lot of discussion on all this prior.

MR. WEYANT: Mr. Titolo, I am sure the use variance was the major problem this Board had tonight. That has been settled. I don't see any need for Mr. Sapienza to come next month. The area variances are, I am not going to say simple, is not the right word, but it is something that this Board can handle.

MR. DOHERTY: We discussed that in length already.

MR. WEYANT: Yes, there will not be a Public Hearing for that part of it.

MR. SAPIENZA: I want to thank you for that. Concerning Mrs. Ignacio: The steps are exactly the way they have been since the 70's. They are just painted nicer and new. The door is exactly where it was. The only thing is the little window is a little bigger. I put those super expensive pine trees, three of them, behind the thing in 2001, or whenever it was. I got them up in Middletown somewhere, those really fancy pine trees that grow big. I will do anything with the Building Department and Mrs. Ignacio to make her happy to make anyone in the neighborhood happy. I thank you.

MR. JANNARONE: What she said was that there were guys sitting on the porch, up there drinking beer and looking into her yard.

MR. WEYANT: Let's stop, for one second I want the summary page which you have of mine.

MR. TITOLO: Yes, sir. Do we need to keep one of the entire package?

MR. LAKE: Yes, we do.

MR. WEYANT: Fine. I am satisfied with my summary. Anything else?

MR. TITOLO: I just want to comment on what Mr. Jannarone said about people drinking beer. The actual landing is 3x3. It is impossible to have people up there. The door opens. There is barely enough room. I understand what people are saying, but people are emotional, and people really don't understand the actual condition. I wanted to address that, because by saying that you put that on the record.

MR. JANNARONE: Put something up so that nobody can see anything.

MR. SAPIENZA: I will do anything to make everybody happy.

MR. WEYANT: We have that on the record.

MR. DONNERY: That is hearsay it should not be brought up.

MR. WEYANT: Thank you, gentlemen.

MR. TITOLO: Thank you, Mr. Chairman. Thank you, gentlemen.

MR. WEYANT: Our next meeting is November 15, 2010. We will discuss the area variances at that time.

At 7:50 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is
Monday, November 15, 2010**